

<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, it was asserted that oral argument should be granted because the finding of an overpayment of compensation was improper. The Board, in exercising its discretion, denies appellant's request for oral argument because the matter raised requires an evaluation of the evidence presented. As such, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$966.19 because she was overpaid for mileage reimbursements for the period May 26, 2015 through January 11, 2016; and (2) whether OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances of the case as set forth in the Board's prior decisions and orders are incorporated herein by reference. The relevant facts are as follows.

On July 31, 1992 appellant, then a 40-year-old food service worker, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment. After extensive development, OWCP accepted the claim for dysthymic disorder on May 30, 1997. Appellant elected to receive retirement benefits from the Office of Personnel Management (OPM) in lieu of FECA compensation and her annuity commenced on March 15, 2008.

By decision dated December 7, 2016, a hearing representative with OWCP's Branch of Hearings and Review finalized a preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$3,168.84 because appellant had received improper reimbursement payments related to travel to medical appointments from January 6, 2014 through December 7, 2015 due to receiving duplicate payments or payments based on exaggerated mileage. He also found her at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

Appellant filed an appeal with the Board and, by decision dated December 27, 2017,<sup>5</sup> the Board set aside the December 17, 2016 OWCP decision, finding that the case was not in posture for decision because the record did not contain sufficient documentation to verify that she had submitted duplicate requests for reimbursement and/or requested that she be paid for incorrect

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the January 17, 2020 decision, OWCP received additional evidence. Appellant also submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

<sup>4</sup> Docket No. 95-0332 (issued April 3, 1997); Docket No. 17-1041 (issued December 27, 2017); Docket No. 19-0261 (issued July 3, 2019), *petition for recon. denied*, Docket No. 19-0261 (issued December 3, 2020).

<sup>5</sup> *Id.*

mileage. The Board remanded the case for reconstruction of the record, to include any travel reimbursement forms (Form OWCP-957) appellant had submitted for claimed periods.

OWCP subsequently placed additional documentation into the record, including OWCP-957 forms, all signed by appellant on May 29, 2015, and a listing of the Form OWCP-957 receipt dates and dates paid. A chronological pay history from January 6, 2014 through January 11, 2016 noted duplicate payments. Remittance vouchers for July 2 and December 24, 2015 described payments for travel reimbursement of \$1,200.23 and \$2,260.80, respectively. Copies of cancelled checks in those amounts are found in the record, as well as cancelled checks dated January 28 and March 3, 2016 for \$929.88 and \$559.38, respectively.

By decision dated October 26, 2018, an OWCP hearing representative finalized a March 13, 2018 preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$3,205.14. She found that the overpayment occurred because appellant was overpaid for mileage reimbursement related to travel to medical appointments from January 6, 2014 through December 7, 2015. She further found appellant at fault in the creation of the overpayment because she knowingly claimed and accepted compensation to which she was not entitled.

Appellant timely filed an appeal with the Board and, by decision dated July 3, 2019,<sup>6</sup> the Board found that she received overpayment of compensation in the amount of \$2,238.95 for the period January 6, 2014 through May 26, 2015 because she received reimbursement for duplicate and excessive travel reimbursement requests.<sup>7</sup> The Board further found, however, that the case was not in posture for decision regarding whether an overpayment of compensation for the period June 1, 2015 through January 11, 2016 was created. It remanded the case to OWCP to obtain the completed OWCP-957 forms for that period.

Subsequent to the Board's decision, OWCP received additional OWCP-957 forms. These were signed by appellant on May 29 and December 1, 2015 and were for travel between her home in Vallejo, California, and the office of Dr. Brandes in Napa, California. For 21 days covering the period June 1 through December 7, 2015, appellant claimed 77 miles of travel. For the period May 26, 2015 through January 11, 2016, she filed forms for 25 days, claiming 38.8 miles. On these forms, appellant certified with her signature that the information she provided in connection with the travel refund request was true and correct, and that she was aware that any misrepresentation to obtain reimbursement was subject to penalties. Each of the forms submitted was also signed by Dr. Brandes.

Additional evidence received included a listing of receipt dates for OWCP-957 forms and dates paid. A chronological pay history from January 6, 2014 through January 11, 2016 noted duplicate payments. Remittance vouchers for July 2 and December 24, 2015 described payments for travel reimbursement of \$1,200.23 and \$2,260.80, respectively. Copies of cancelled checks in those amounts are found in the record, as well as cancelled checks dated January 28 and March 3,

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<sup>6</sup> *Supra* note 4.

<sup>7</sup> The Board, *inter alia*, affirmed OWCP's finding that appellant received an overpayment of compensation in the amount of \$22.43 on May 26, 2015.

2016 for \$929.88 and \$559.38, respectively. All cancelled checks were endorsed by appellant. An overpayment worksheet indicates that on January 28, 2016 she was paid \$44.28 for 77 miles of travel on 21 separate occasions when she should have been paid \$21.85 for each 38-mile trip, which yielded a daily overpayment of \$22.43, or a total overpayment of \$471.03 for this period. A second worksheet indicates that on March 3, 2016 appellant received duplicate daily payments of \$22.43 for 22 days for the period May 26 through December 7, 2015, and was also overpaid for claimed excessive mileage on OWCP-957 forms of \$0.58 for December 14 and 21, 2015, and \$0.54 for January 11, 2016, which yielded an overpayment of \$495.16 for the period May 26, 2015 through January 11, 2016.

On August 19, 2019 OWCP issued a preliminary overpayment determination that an overpayment of compensation in the amount of \$966.19 had occurred because appellant was paid for duplicative mileage reimbursement requests that she submitted for specific dates during the period May 26, 2015 through January 11, 2016. It found her at fault in the creation of the overpayment because she knowingly claimed and accepted compensation to which she was not entitled. The preliminary overpayment decision listed the specific dates in which duplicate or triplicate claims and/or excessive mileage claims were made. A listing of receipt dates for OWCP-957 forms and dates paid was attached, along with an overpayment action request and overpayment recovery questionnaire (OWCP-20). OWCP afforded appellant 30 days to respond.

In correspondence postmarked September 7, 2019, appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. She contested the fact and amount of the overpayment, as well as the finding of fault.

During the hearing held on December 4, 2019, appellant disputed the fact of the overpayment. The hearing representative advised her to complete an overpayment recovery questionnaire and held the record open for 30 days.

On December 16, 2019 appellant submitted an overpayment recovery questionnaire in which she listed monthly income of \$1,927.00 and monthly expenses of \$1,975.33. No additional evidence was received.

By decision dated January 17, 2020, OWCP's hearing representative finalized the August 19, 2019 preliminary overpayment determination. He identified the amount of the overpayment for the period May 26, 2015 through January 11, 2016 as \$966.19. The hearing representative found that the overpayment occurred for the period May 26, 2015 through January 11, 2016 because appellant was overpaid for mileage reimbursement related to travel to medical appointments, noting that she claimed the same dates on multiple forms and exaggerated the distance that she traveled. He also found her at fault in the creation of the overpayment because she knew or should have known that an overpayment would be created by submitting multiple requests for travel reimbursement on the same dates and by submitting requests for incorrect distances travelled. The hearing representative found that, therefore, the overpayment was not subject to waiver. He noted that appellant did not submit financial documentation to support her claimed monthly income and expenses, and found that the overpayment should be recovered in full.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree of the period of disability, or aid in lessening the amount of monthly compensation.<sup>8</sup> With respect to travel expenses for medical treatment, OWCP's regulations provide:

“(a) The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what a reasonable distance to travel is, OWCP will consider the availability of services, the employee's condition, and the means of transportation. Generally, a roundtrip distance of up to 100 miles is considered a reasonable distance to travel. Travel taken by the shortest route, and if practical, by public conveyance. If the medical evidence shows that the employee is unable to use these means of transportation, OWCP may authorize travel by taxi or special conveyance.”<sup>9</sup>

In interpreting section 8103(a) of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA.<sup>10</sup> The only limitation on OWCP's authority is that of reasonableness.<sup>11</sup> OWCP may authorize medical treatment, but determine that the travel expense incurred for such authorized treatment was unreasonable or unnecessary.<sup>12</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant received an overpayment of compensation in the amount of \$943.76 during the period May 27, 2015 through January 11, 2016.

The Board previously found in its July 3, 2019 decision that appellant received an overpayment of compensation in the amount of \$2,238.95 for the period January 6, 2014 through May 26, 2015 because she received reimbursement for duplicate and excessive travel reimbursement requests.<sup>13</sup> The Board has held that findings made in prior Board decisions are

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<sup>8</sup> 5 U.S.C. § 8103.

<sup>9</sup> 20 C.F.R. § 10.315(a); *S.M.*, Docket No. 19-0989 (issued May 20, 2020).

<sup>10</sup> *G.C.*, Docket No. 19-0238 (issued June 24, 2019).

<sup>11</sup> *M.G.*, Docket No. 19-1791 (issued August 13, 2020); *B.H.*, Docket No. 17-0479 (issued March 19, 2019).

<sup>12</sup> *J.S.*, Docket No. 19-1246 (issued June 8, 2021).

<sup>13</sup> The total overpayment amount included an overpayment of \$22.43 for May 26, 2015.

*res judicata* and cannot be considered absent further review by OWCP under section 8128 of FECA.<sup>14</sup>

On remand, additional evidence was received, including additional OWCP-957 forms in which she claimed either duplicate compensation for the same date or claimed excessive mileage.

By decision dated January 17, 2020, OWCP's hearing representative finalized the August 19, 2019 preliminary overpayment determination, finding that appellant received an overpayment of compensation for the period May 26, 2015 through January 11, 2016.

Pay records for the period May 26, 2015 through January 11, 2016 substantiate that OWCP made duplicate or improper payments during this period, and the record also contains cancelled checks dated January 28 and March 3, 2016 for \$929.88 and \$559.38, respectively, which were signed by appellant. Accordingly, the Board finds that fact of overpayment has been established.

Overpayment worksheets support that on January 28, 2016 she was overpaid \$471.03 for 21 dates when she claimed excessive mileage, and on March 3, 2016 she was overpaid \$493.46 for 22 dates when she claimed duplicate payments, plus \$1.70 when she was paid for incorrect mileage for travel on December 14 and 21, 2015 and January 11, 2016. Thus, by adding \$471.03, \$493.46 and \$1.70, OWCP properly found an overpayment of compensation in the amount of \$966.19 for the period May 26, 2015 through January 11, 2016. However, as noted above, the overpayment of \$22.43 for May 26, 2015 may not be considered in the current appeal as it was previously considered in the overpayment affirmed by the Board in its July 3, 2019 decision and is therefore *res judicata*. Subtraction of the \$22.43 overpayment created on May 26, 2015 from the \$966.19 overpayment created during the period May 26, 2015 through January 11, 2016 yields a total overpayment for the period May 27, 2015 through January 11, 2016 in the amount \$943.76. The Board will, therefore, modify OWCP's January 17, 2020 decision to reflect that appellant received an overpayment of compensation in the amount of \$943.76 for the period May 27, 2015 through January 11, 2016.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience."<sup>15</sup> No waiver of payment is possible if appellant is at fault in helping to create the overpayment.<sup>16</sup>

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<sup>14</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

<sup>15</sup> 5 U.S.C. § 8129; *see R.W.*, Docket No. 19-0334 (issued August 7, 2020); *S.M.*, Docket No. 18-1525 (issued April 12, 2019).

<sup>16</sup> *See R.W.*, *id.*

Section 10.433(a) of OWCP's regulations provides that OWCP:

"[M]ay consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault in creating an overpayment:

- (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or
- (2) Failed to provide information which he or she knew or should have known to be material; or
- (3) Accepted a payment which he or she knew or should have known to be incorrect. (This provision applies only to the overpaid individual)."<sup>17</sup>

To determine if an individual was at fault with respect to the creation of an overpayment, OWCP examines the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly found appellant at fault in the creation of the overpayment in the amount of \$943.76 for the period May 27, 2015 through January 11, 2016, thereby precluding waiver of recovery of the overpayment.

The Board finds that appellant made an incorrect statement as to a material fact, which she knew or should have known to be incorrect. The record establishes that on May 29 and December 1, 2015 she signed OWCP-957 forms for reimbursement for round trip travel from her home to Dr. Brandes' office for the period May 27, 2015 through January 11, 2016. On these forms appellant claimed duplicate reimbursement and/or claimed excessive mileage.

Each form signed by appellant included a certification clause in which, by signing, she acknowledged that the information given by her and in connection with the form was true and correct to the best of her knowledge, and noted that any person who knowingly made a false statement or misrepresentation to obtain reimbursement to OWCP was subject to civil penalties and/or criminal prosecution.

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<sup>17</sup> 20 C.F.R. § 10.433(a); *see R.W., id.*; C.Y., Docket No. 18-0263 (issued September 14, 2018); *see also* 20 C.F.R. § 10.430.

<sup>18</sup> *Id.* at § 10.433(b); *see M.J.*, Docket No. 19-1665 (issued July 29, 2020).

The record supports that appellant signed each of these forms with duplicate and/or excessive mileage requests on the same date. Under the circumstances of this case, the Board finds that she misrepresented a material fact in order to obtain reimbursement from OWCP. Appellant is, therefore, at fault in the creation of the overpayment and precluded from waiver of recovery of the overpayment.<sup>19</sup>

With respect to recovery of the overpayment, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA.<sup>20</sup> As appellant is not receiving wage-loss compensation, the Board does not have jurisdiction with respect to the recovery of the overpayment under the Debt Collection Act.<sup>21</sup>

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$943.76 during the period May 27, 2015 through January 11, 2016. The Board further finds that OWCP properly found her at fault in the creation of the overpayment in the amount of \$943.76 for the period May 27, 2015 through January 11, 2016, thereby precluding waiver of recovery of the overpayment.

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<sup>19</sup> See *E.K.*, Docket No. 18-0599 (issued February 26, 2020); *W.A.*, Docket No. 14-350 (issued October 28, 2014).

<sup>20</sup> *E.F.*, Docket No. 18-1320 (issued March 13, 2019).

<sup>21</sup> *Id.*



**ORDER**

**IT IS HEREBY ORDERED THAT** the January 17, 2020 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: December 3, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board